Filed 4/6/10 In re D.K. CA6

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

In re D. K., et al., Persons Coming Under the Juvenile Court Law.	H034494 (Santa Clara County Super. Ct. Nos. JD18450, JD18451)
SANTA CLARA COUNTY DEPARTMENT OF FAMILY AND CHILDREN'S SERVICES, Plaintiff and Respondent, v. K. K., Defendant and Appellant.	

In these dependency proceedings, mother K.K. appeals from the juvenile court's July 21, 2009 orders sustaining Welfare and Institutions Code[1] section 387 petitions (supplemental) filed on behalf of her son Da.K. and daughter De.K. who had been returned to her physical custody, placing them in long-term foster care without provision of family reunification services, and requiring parents to continue a 12-step program, individual counseling, and drug testing. (See § 395, subd. (a)(1).)

[1] All further statutory references are to the Welfare and Institutions Code.

On appeal, mother contends that the trial court failed to exercise its discretion to extend family reunification services beyond the 18-month statutory maximum and the issue was not forfeited by her failure to request additional services below. In the alternative, mother argues that, as a result of recent statutory changes, the time period during which she previously received family maintenance services does not count toward that 18-month maximum for reunification services and the court failed to exercise its discretion to extend reunification services because it was unaware of these statutory changes. She also raises an ineffective assistance of counsel claim based upon her counsel's failure to raise these recent statutory changes and request additional family reunification services. Lastly, mother contends that the court had no authority to order her to continue a 12-step program, individual counseling, and drug testing to facilitate visitation with her children.

At the time of its July 2009 orders, the juvenile court lacked statutory authority to order any further reunification services and possessed no extra-statutory discretion to order a resumption of family reunification services under the circumstances of this case. The court had the statutory authority, however, to require mother to participate in certain services or programs to ensure non-detrimental visitation with her children and continuation of an important parent-child relationship. Accordingly, we affirm.

A. *Procedural History*

On September 10, 2007, juvenile dependency petitions were filed on behalf of Da.K. and De.K. pursuant to section 300, subdivision (b). The petitions alleged that each child has suffered, or there was a substantial risk that the child will suffer, serious physical harm or illness as a result of parental failure or inability to supervise or protect the child adequately, willful or negligent parental failure to provide the child with adequate food, clothing, shelter, or medical treatment, and parental inability to provide regular care for the child due to substance abuse.

The petitions stated that both parents had a substance abuse problem with methamphetamine. According to the petitions, mother had accepted voluntary family maintenance services for a number of months and had agreed to submit to random drug testing but she had tested only twice and eventually she had rejected voluntary services. Father had declined voluntary family maintenance services. The petitions alleged that both parents had significant criminal histories, which included convictions for possession of a controlled substance and being under the influence of a controlled substance.

The petitions indicated that domestic violence by father in the home placed the children at substantial risk of physical and emotional abuse. They stated that the children were afraid of father, were unwilling to return home, and had been hit with a belt as a form of punishment.

The petitions further alleged that the home lacked electricity and had unkempt and filthy living conditions, including food and garbage littered throughout the home, spoiled food in the refrigerator, and toilets filled with cigarettes and matches. The petitions stated that the children had been placed in protective custody on September 6, 2007 due to the mother's absence as the result of her arrest and allegations of severe parental neglect.

On September 11, 2007, the court found that continued detention was necessary and ordered the children to be temporarily removed from the physical custody of their mother and father.

At the October 26, 2007 jurisdiction and disposition hearing, the court found that the petition's allegations were true as alleged and the children were described by section 300, subdivision (b). The court declared each child to be a dependent child of the court. It ordered the children removed from the physical custody of the father with whom they were residing at the time the petition was initiated. The court ordered the children continued in shelter care placement under the care, custody and control of the Department

of Family and Children Services (DFCS) pending further placement. It ordered family reunification services for the children and parents.

There were a number of review proceedings. On June 10, 2008, the court conducted the sixth-month review hearing. At that time, the court continued the children as dependent children of the court and continued them under the care, custody and control of the DFCS in foster home placement. The court ordered the children and parents to continue receiving family reunification services.

At the August 19, 2008 interim review hearing, the court continued the children as dependent children of the court under the care, custody and control of the DFCS but approved placement of the children with the mother. It ordered "the intensive home-based services known as wraparound services."[2]

The status review report, filed November 13, 2008, recommended that the court continue family maintenance services to the mother and children and terminate family reunification services to the father. Although the court had ordered supervised visitation once a week for the father, he had not visited his children since June 2008.

At the "12-month review hearing" on November 13, 2008, the court continued the children as dependents of the court, ordered wraparound services for children and mother, and terminated reunification services to father. (See § 364, subd. (d).) It set a review hearing for May 12, 2009. (§ 364.)

On April 16, 2009, section 387 petitions (supplemental), seeking more restrictive foster home placement of the children, were filed on behalf of both children. Amended section 387 petitions were filed on April 20, 2009. Second amended petitions were filed on July 17, 2009.

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[2] As defined by section 18251, subdivision (d), wraparound services mean "community-based intervention services that emphasize the strengths of the child and family and includes the delivery of coordinated, highly individualized unconditional services to address needs and achieve positive outcomes in their lives."

On July 20 and 21, 2009, the court held a contested section 387 hearing. The court found true the allegations of the second-amended petitions as amended to conform to proof and contained in the revised petition filed on July 21, 2009.

The allegations found true were as follows. The children had been placed in protective custody on April 16, 2009. The children were at substantial risk of harm in the care of their mother due to the mother's substance abuse and general neglect. Mother had a substance abuse problem that negatively impaired her ability to care for her children. Since December 17, 2008, the mother had 18 "no shows" for random drug testing and was not participating in court ordered NA/AA meetings. On December 10, 2008, wraparound staff observed many empty cans of beer and a bong in living room of mother's home. On April 10, 2009, wraparound staff observed an empty vodka bottle by the front door.

The home's living conditions posed a health and safety risk to the children. The wraparound team found De.'s room "infested with dog feces all over her clothes, blankets, and on the floor." Wraparound staff had observed "many different men coming in and out of the house, which makes the children uncomfortable."

Mother was not meeting the children's physical, emotional, or educational needs. They had gone to school hungry. De., who had been diagnosed with attention deficit hyperactivity disorder, had not taken her prescribed psychotropic mediation for a six-week period beginning in December 2008 and ending in February 2009 because her prescription had not been filled. Mother had failed to show up for two medical appointments scheduled to assess De.'s medication.

Mother was not providing adequate supervision. During a welfare check at 11:00 p.m. on April 8, 2009, law enforcement found the children were being supervised by their 17-year old sister. When a child advocate arrived at 10:00 a.m. during December 2009, the mother was asleep and the children were on the roof. Although visitation with the

children's paternal grandmother was required to be supervised, mother continued to allow the grandmother to care for the children and have unsupervised contact with them.

On July 21, 2009, the court found that, pursuant to California Rules of Court, rule 5.565,[3] the time permitted by law for reunification services had expired. The court continued the children as dependent children of the court, removed the children from the mother's physical custody, terminated reunification services to mother, and ordered foster home placement with wraparound services. The court ordered a permanent plan of long-term foster care with their current foster homes with a goal of legal guardianship. The court ordered supervised visitation by mother and by father, reasonable sibling visitation, and reasonable relative visitation. To facilitate the parental visits, the court ordered mother and father to continue a 12-step program, individual counseling, and drug testing.

The court set the next hearing for January 11, 2010 for review under section 366.3, which requires status review hearings for a dependent child "in a placement other than the home of a legal guardian . . . ." (§ 366.3, subd. (d).)

B. *Forfeiture Doctrine*

"[A] reviewing court ordinarily will not consider a challenge to a ruling if an objection could have been but was not made in the trial court. (*People v. Saunders*

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[3] All further references to rules are to the California Rules of Court. At the time of hearing on the section 387 petitions, rule 5.565(f) provided with regard to permanency planning following a hearing on such supplemental petitions: "If a dependent child was returned to the custody of a parent or guardian at the 12-month review or the 18-month review or at an interim review between 12 and 18 months and a 387 petition is sustained and the child removed once again, the court must set a hearing under section 366.26 unless the court finds there is a substantial probability of return within the next 6 months or, if more than 12 months had expired at the time of the prior return, within whatever time remains before the expiration of the maximum 18-month period." The rule has not been updated to reflect the 2008 amendments allowing reunification services to be extended up to 24 months under very limited circumstances.

(1993) 5 Cal.4th 580, 589-590 . . . .)" (*In re S.B.* (2004) 32 Cal.4th 1287, 1293.) This forfeiture doctrine generally applies in juvenile court dependency proceedings but application of the rule is not automatic. (*Ibid.*) An appellate court has discretion to review a forfeited claim but such discretion "should be exercised rarely and only in cases presenting an important legal issue. [Citations.]" (*Ibid.*) In dependency cases, such discretion "must be exercised with special care." (*Ibid.*) "Because these proceedings involve the well-being of children, considerations such as permanency and stability are of paramount importance. (§ 366.26.)" (*Ibid.*)

We presume the forfeiture doctrine applies to parental failures to affirmatively request extended reunification services.[4] But even if we assume arguendo that mother's substantive claims on appeal were not forfeited, we find no reversible error.

C. *No Extra-Statutory Discretion to Order Further Reunification Services*

Appellant insists that the court had discretion, of which it was unaware and which it failed to exercise, to extend appellant's reunification services beyond the 18-month maximum. This contention is without merit.

"When a juvenile court sustains a supplemental petition pursuant to section 387, the case does not return to ' "square one" ' with regard to reunification efforts. [Citation.] Instead, the question becomes whether reunification efforts should resume." (*Carolyn R. v. Superior Court* (1995) 41 Cal.App.4th 159, 166.) The court must determine the chronological state of the case for reunification purposes, determine whether the time for reunification services has run, and step into the appropriate stage of permanency

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[4] In addition, a parent may waive reunification services but the parent must be represented by counsel and execute a waiver of services form and the juvenile court cannot "accept the waiver of services unless it states on the record its finding that the parent or guardian has knowingly and intelligently waived the right to services." (§ 362.5, subd. (b)(14).)

planning. (*Ibid*.) "Failure to order additional reunification services when a court removes a child from parental custody incident to a section 387 petition is reversible error only if under the particular facts of the case the juvenile court abuses its discretion in failing to order such services. [Citation.]" (*Id*. at pp. 166-167.)

At the time the court sustained the section 387 petitions in this case,[5] the dependency proceedings had passed the 12-month and 18-month marks for reunification services. (See former §§ 361.5, subds. (a)(1), (a)(2) [now (a)(3)], 366.21, subds. (f) and (g) [Stats. 2008, ch. 482, §§ 1.7, 2, pp. 2790-2792, 2804-2805], §§ 366.22, subd. (a), 366.25). Although the court had limited authority to extend reunification services up to a maximum of 24 months under statutory provisions newly added in 2008 (former §§ 361.5, subd. (a)(3) [now (a)(4)] [Stats. 2008, ch. 482, §§ 1.7, pp. 2790-2792]; see §§ 366.22, subd. (b), 366.25), appellant neither contends nor shows that these new provisions applied to her.[6]

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[5] Statutory changes enacted in 2009 are not before us. Some of the 2009 legislation went into effect on August 6, 2009, after the court's July 2009 orders. (See Stats. 2009, ch. 120, pp. 2461-2473.) Other 2009 enactments will become operative on July 1, 2010 while still others will become operative on January 1, 2014. (Stats. 2009, ch. 287, pp. 3417-3491.)

[6] In July 2009, former section 361.5, subdivision (a)(3) (now (a)(4)), provided in part: "Notwithstanding paragraph (2) [18-month maximum for reunification services], court-ordered services may be extended up to a maximum time period not to exceed 24 months after the date the child was originally removed from physical custody of his or her parent or guardian if it is shown, at the hearing held pursuant to subdivision (b) of Section 366.22, that *the permanent plan for the child is that he or she will be returned and safely maintained in the home within the extended time period*. The court shall extend the time period only if it finds that it is in the child's best interest to have the time period extended and that there is a substantial probability that the child will be returned to the physical custody of his or her parent or guardian who is described in subdivision (b) of Section 366.22 within the extended time period, or that reasonable services have not been provided to the parent or guardian." (Stats. 2008, ch. 482, § 1.7, p. 2791, italics added.) Subdivision (b) of section 366.22 then provided, and still provides: "If the child is not returned to a parent or legal guardian at the permanency review hearing and the court determines by clear and convincing evidence that the best interests of the child

Nevertheless, appellant argues that, under case law authority, the court had discretion to order further reunification services. Although mother acknowledges with respect to a different appellate argument that "the juvenile court's intervention to protect a child from abuse or neglect is regulated by an explicit statutory scheme" (*In re Nolan W.* (2009) 45 Cal.4th 1217, 1224; see *In re Guardianship of Ann S.* (2009) 45 Cal.4th 1110, 1133 [dependency proceedings governed by a comprehensive statutory scheme]), her arguments imply that the juvenile court in this instance retained some extra-statutory authority to extend family reunification services beyond the 18-month maximum without satisfying the statutory criteria under former section 361.5, subdivision (a)(3) (now

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would be met by the provision of additional reunification services to a *parent or legal guardian who is making significant and consistent progress in a substance abuse treatment program, or a parent recently discharged from incarceration or institutionalization and making significant and consistent progress in establishing a safe home for the child's return*, the court may continue the case for up to six months for a subsequent permanency review hearing, provided that the hearing shall occur within 24 months of the date the child was originally taken from the physical custody of his or her parent or legal guardian. The court shall continue the case only if it finds that there is a substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian and safely maintained in the home within the extended period of time or that reasonable services have not been provided to the parent or legal guardian. For the purposes of this section, in order to find a substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian and safely maintained in the home within the extended period of time, the court shall be required to find all of the following: [¶] (1) That the parent or legal guardian has consistently and regularly contacted and visited with the child. [¶] (2) That the parent or legal guardian has made significant and consistent progress in the prior 18 months in resolving problems that led to the child's removal from the home. [¶] (3) The parent or legal guardian has demonstrated the capacity and ability both to complete the objectives of his or her substance abuse treatment plan as evidenced by reports from a substance abuse provider as applicable, or complete a treatment plan postdischarge from incarceration or institutionalization, and to provide for the child's safety, protection, physical and emotional well-being, and special needs." (Stats. 2008, ch. 482, § 3, p. 2808, italics added.)

(a)(4)) (Stats. 2008, ch. 482, § 1.7, pp. 2791-2792).[7] We reject any suggestion that the juvenile court in this case retained some extra-statutory discretion to extend family reunification services beyond the applicable statutory limits.

In support of her contentions, appellant cites *Carolyn R. v. Superior Court*, *supra*, 41 Cal.App.4th 159. This case actually supports the conclusion that the juvenile court did not have discretion to order further reunification services for appellant. In *Carolyn R.*, a mother argued that the juvenile court erred by refusing to "grant her 12 additional months of reunification services after it sustained a supplemental petition (§ 387) to remove her children from her physical custody for a second time." (*Id*. at pp. 161-162, fn. omitted.) It was "undisputed the mother had received eight months of reunification services before November 1994 and ten months of family maintenance services thereafter." (*Id*. at pp. 162-163.) The reviewing court stated that "[a] court may extend the 18-month maximum for reunification efforts only under very limited circumstances, that is, when: no reunification plan was ever developed for the parent (*In re Dino E.* (1992) 6 Cal.App.4th 1768, 1777 . . .); the court finds reasonable services were not offered (*In re Daniel G.* (1994) 25 Cal.App.4th 1205, 1211 . . .); or the best interests of the child would be served by a continuance (see § 352) of an 18-month review hearing (*In re Elizabeth R.*, *supra*, 35 Cal.App.4th at pp. 1798-1799)." (*Id*. at p. 167.) But the reviewing court found none of those exceptions applied in that case. (*Ibid*.) The reviewing court determined that the juvenile court properly refused to provide additional reunification services because "the case had reached at least the 18-month review stage when the court sustained the section 387 petition" and "[a]t the 18 month stage, further services are ordinarily not an option which the court may consider. (§§ 366.22, subd. (a),

[7] See ante, footnote 6.

361.5, subd. (a); *In re Elizabeth R.* (1995) 35 Cal.App.4th 1774, 1788 . . . .)" (*Id*. at p. 167.)

Appellant is not claiming that, during the statutory time frame for reunification services immediately following the initial removal of the children from parental custody, no family reunification plan was developed or she was deprived of reasonable reunification services.[8] She was not, as was the mother in *In re Elizabeth R* (1995) 35 Cal.App.4th 1774, institutionalized due to mental health problems during the reunification phase.

In *In re Elizabeth R.*, the juvenile court, at the 18-month review hearing in September 1993, terminated family reunification services and set the case for "a selection and implementation hearing." (*Id*. at pp. 1778, 1782.) The mother, who had bipolar disorder, had been "hospitalized for all but five months of the reunification phase of the dependency proceedings" (*id*. at p. 1777) but otherwise she had "an impeccable record of visitation and efforts to comply with the reunification plan." (*Id*. at pp. 1777-1778, see *id*. at p.1790.) Although mother had never brought a section 352 motion for a continuance of hearing, the appellate court determined that "section 352 provides an

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[8] At the permanency hearing, the permanency review hearing, and the subsequent permanency review hearing, a court must determine whether a parent from whom a child was removed has received reasonable reunification services. (Former § 366.21, subd. (f) [Stats. 2008, ch. 482, § 2, p. 2804] ["The court shall also determine whether reasonable services that were designed to aid the parent or legal guardian to overcome the problems that led to the initial removal and continued custody of the child have been provided or offered to the parent or legal guardian"]; §§ 366.21, subd. (f) [same], 366.22, subd. (a) ["The court shall determine whether reasonable services have been offered or provided to the parent or legal guardian"], 366.25, subd. (a)(3) ["The court shall determine whether reasonable services have been offered or provided to the parent or legal guardian"].) The court cannot terminate parental rights if "[a]t each hearing at which the court was required to consider reasonable efforts or services, the court has found that reasonable efforts were not made or that reasonable services were not offered or provided." (§ 366.26, subd. (c)(2)(A).)

emergency escape valve in those rare instances in which the juvenile court determines the best interests of the child would be served by a continuance of the 18-month review hearing." (*Id*. at pp. 1798-1799.) It ordered the juvenile court, upon remand, to "entertain a Welfare and Institutions Code section 352 motion for continuance of services beyond the statutory time." (*Id*. at p. 1799.)

Regardless of the merits of *In re Elizabeth R.*, whose analysis we question,[9] the 2008 amendments to the dependency statutes addressed the problem of parental institutionalization or incarceration during the reunification period and established a new 24-month maximum for reunification services to allow courts some leeway to deal with deserving situations. (See §§ 361.5, former subdivision (a)(3) [now (a)(4)] [Stats. 2008, ch. 482, § 1.7, pp. 2791-2792]; see also §§ 366.22, subds. (a) and (b), 16508.1.)[10] As

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[9] Section 352 authorizes a juvenile court, "upon request," to "continue any hearing under this chapter beyond the time limit within which the hearing is otherwise required to be held, provided that no continuance shall be granted that is contrary to the interest of the minor." (§ 352, subd. (a).) To obtain a continuance of a hearing, the requesting party must file written notice "at least two court days prior to the date set for hearing" and must make an evidentiary showing of "good cause." (*Ibid*.) Further, any continuance must be limited to the "period of time shown to be necessary by the evidence presented at the hearing on the motion for the continuance." (*Ibid*.) This section does not authorize a court to make an affirmative order resuming or extending reunification services beyond the time limits established by statute. We are mindful that "[i]f there is no ambiguity in the language of the statute, 'then the Legislature is presumed to have meant what it said, and the plain meaning of the language governs.' [Citation]." (*Lennane v. Franchise Tax Bd.* (1994) 9 Cal.4th 263, 268.)

[10] See ante, footnote 6. In addition, subdivision (a) of section 366.22, as amended in 2008, provides "At the permanency review hearing [within 18 months], the court shall consider the criminal history . . . of the parent or legal guardian subsequent to the child's removal, to the extent that the criminal record is substantially related to the welfare of the child or the parent's or legal guardian's ability to exercise custody and control regarding his or her child . . . ." Under this provision, the court is required to "consider the efforts or progress, or both, demonstrated by the parent or legal guardian and the extent to which he or she availed himself or herself of services provided, taking into account the particular barriers of an incarcerated or institutionalized parent or legal guardian's access to those court-mandated services and ability to maintain contact with his or her child

previously stated, appellant is not claiming that she meets the statutory requirements for such additional reunification services beyond the 18-month maximum.

Appellant suggests that *Renee J. v. Superior Court* (2002) 96 Cal.App.4th 1450 supports her position. The circumstances of that case were unique. "Renee [the mother] was offered no reunification services at all during the initial six months of the dependency." (*Id*. at p. 1466.) About 18 months after her child was initially detained, the juvenile court terminated reunification services and set the matter for a section 366.26 hearing "without actually conducting the review hearing" because that court believed it was governed by a Supreme Court decision that had affirmed the court's initial denial of reunification services to Renee based upon a statutory exception. (*Id*. at pp. 1454-1455, 1458.) The reviewing court agreed with the mother's contention that juvenile court "erred in applying the California Supreme Court's interpretation of Welfare and Institutions Code section 361.5, former subdivision (b)(10) [fn. omitted], adjudged in an earlier phase of th[e] case (*Renee J. v. Superior Court* (2001) 26 Cal.4th 735 . . .), because the California Legislature almost immediately overrode that interpretation by amending the statute" (*id*. at p. 1455) and the Legislature intended its clarification to have retroactive effect. (*Id*. at pp. 1459-1461.) The reviewing court ordered the juvenile court to hold a hearing to determine whether to continue the 18-month hearing pursuant to section 352 and offer additional reunification services to Renee. (*Id*. at pp. 1466-1467.) In this case,

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. . . ." (§ 366.22, subd. (a).) Under section 16508.1, as amended in 2008, a social worker is not required to recommend that a court set a hearing to terminate parental rights where a child has been in foster care for "15 of the most recent 22 months," where "[t]he incarceration or institutionalization of the parent or parents, or the court-ordered participation of the parent or parents in a residential substance abuse treatment program, constitutes a significant factor in the child's placement in foster care for a period of 15 of the most recent 22 months, and termination of parental rights is not in the child's best interests, considering factors such as the age of the child, the degree of parent and child bonding, the length of the sentence, and the nature of the treatment and the nature of the crime or illness."

appellant was provided with reunification services in the disposition of the section 300 petitions and there was no issue regarding the applicability of a statutory exception to provision of reunification services. (See § 361.5, subd. (b).)

Appellant also cites *Bridget A. v. Superior Court* (2007) 148 Cal.App.4th 285 and *In re A.C.* (2008) 169 Cal.App.4th 636. "A decision 'is not authority for everything said in the . . . opinion but only "for the points actually involved and actually decided." [Citations.]' (*Santisas v. Goodin* (1998) 17 Cal.4th 599, 620 . . . .)" (*People v. Mendoza* (2000) 23 Cal.4th 896, 915.) Neither case establishes that a juvenile court has extra-statutory authority to extend reunification services beyond the statutory 18-month limit.

The appellate court in *Bridget A., supra*, 148 Cal.App.4th 285, held that "whether at the six-month, 12-month or 18-month review hearing, the juvenile court has the authority, in its discretion, to return a dependent child to the physical custody of his or her parent or guardian and either to terminate its jurisdiction or to retain dependency jurisdiction and order family maintenance services to ensure the safety and physical and emotional well-being of the child." (*Id*. at p. 316, fn. omitted.) There was no issue regarding the provision of reunification services in *Bridget A.*

In *In re A.C., supra*, 169 Cal.App.4th 636, the juvenile court placed two brothers in the physical custody of the previously noncustodial father, from whom they were eventually removed. (*Id*. at pp. 639-641.) The reviewing court rejected the children's challenge to a later order continuing family reunification services where such services had commenced only when the children were removed from their father's custody and the mother had never received reunification services prior to the children's removal from the father's custody. (*Id*. at p. 649.) The court concluded that the clock did not "start running when the child [was] placed with a noncustodial parent pursuant to section 361.2." (*Id*. at p. 639.) In this case, the children were not initially placed with a previously noncustodial

parent and family reunification services were provided from the outset of disposition on the original section 300 petitions.

The juvenile court had no extra-statutory discretion in this case to order further reunification services to appellant.

D. *Statutory Time Period for Reunification Services Not Tolled*

Alternatively, appellant maintains that the 18-month statutory maximum for reunification services was tolled under the applicable statute while she received family maintenance services. This contention must be rejected. Under juvenile dependency law, as amended in 2008 and effective in July 2009, the statutorily defined time period for family reunification services was not interrupted by a return to a parent's custody with family maintenance services following the children's initial removal.

When the children were once again removed from parental custody in July 2009, the law in effect generally provided, absent an applicable statutory exception, for *a minimum* of approximately 12 months of family reunification services for a child who was three years or older and not part of a sibling group with a child under age three when initially removed.[11] (Former § 361.5, subds. (a)(1), (b) [Stats. 2008, ch. 482, § 1.7, pp. 2790-2793].) Under former section 361.5, subdivision (a)(1)(A), as amended in 2008, the court was required to order family reunification services for such child "during the period of time beginning with the dispositional hearing and ending with the date of the hearing set pursuant to subdivision (f) of Section 366.21 [permanency hearing], unless

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[11] Before its amendment in 2008, former section 361.5, subdivision (a)(1), had mandated that child welfare services, when provided, "*shall not exceed* a period of 12 months." (See Stats. 2007, ch. 583, § 25.5, p. 3891, italics added.) The 2008 legislation abrogated *In re Derrick S.* (2007) 156 Cal.App.4th 436, which had held that "a juvenile court conducting a dependency for a child above the age of three retains the discretion to terminate the provision of reunification services before expiration of the 12-month period." (*Id*. at p. 449; see Stats. 2005, ch. 625, § 5, p. 3637 ["court-ordered services shall not exceed a period of 12 months"].)

the child is returned to the home of the parent or guardian." (Stats. 2008, ch. 482, § 1.7, p. 2790.) Former subdivision (f) of section 366.21, as amended in 2008, mandated that the permanency hearing be "held no later than 12 months after the date the child entered foster care, as that date is determined pursuant to subdivision (a) of Section 361.5"[12] (Stats. 2008, ch. 482, § 2, p. 2804; cf. Stats. 2007, ch. 583, § 26.5, p. 3903 [same], Stats. 2007, ch. 177, § 14, p. 1794, eff. Aug. 24, 2007 [same].) Former section 361.5, subdivision (a), as amended in 2008, further provided: "Regardless of the age of the child, a child shall be deemed to have entered foster care on the earlier of the date of the jurisdictional hearing held pursuant to Section 356 or the date that is 60 days after the date on which the child was initially removed from the physical custody of his or her parent or guardian." (Stats. 2008, ch. 482, § 1.7, pp. 2790-2791.)

At all relevant times in this case, the children were deemed to have entered foster care on October 26, 2007, the date of the jurisdictional hearing (a date earlier than 60 days after the date on which the children were initially removed from the parent's physical custody). (See Stats. 2008, ch. 482, § 1.7, pp. 2790-2791; Stats. 2007, ch. 583, § 25.5, p. 3891; Stats. 2005, ch. 625, § 5, p. 3637.) Former subdivision (f) of section 366.21, as amended in 2007, would have required the permanency hearing to be held in October 2008 if the children had not been earlier returned to appellant's physical custody. (See Stats. 2007, ch. 583, § 26.5, p. 3903; cf. 2008, ch. 482, § 2, p. 2804.)

Former section 361.5 in effect in October 2008 provided: "Physical custody of the child by the parents or guardians during the applicable time period . . . shall not serve to

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[12] As a result of the 2009 amendments (Stats. 2009, ch. 120, § 3, p. 2469), section 366.21, subdivision (f), now refers to section 361.49 instead of section 361.5, subdivision (a). Section 361.49, newly enacted in 2009 (Stats. 2009, ch. 120, § 1, p. 2461, eff. Aug. 6, 2009), provides: "Regardless of his or her age, a child shall be deemed to have entered foster care on the earlier of the date of the jurisdictional hearing held pursuant to Section 356 or the date that is 60 days after the date on which the child was initially removed from the physical custody of his or her parent or guardian."

interrupt the running of the period [of child welfare services provided upon initial removal]." (Stats. 2007, ch. 583, § 25.5, p. 3891.) The substance of this language was continued and twice stated, in connection with the 18-month and 24-month maximums, in the former section 361.5 in effect in July 2009: "Physical custody of the child by the parents or guardians during the applicable time period . . . shall not serve to interrupt the running of the period [of family reunification services provided upon initial removal]." (Former § 361.5, subds. (a)(2) and (a)(3) (now subds. (a)(3) and (a)(4)) [Stats. 2008, ch. 482, § 1.7, pp. 2791-2792].) Accordingly, a return of the children to appellant with family maintenance (wraparound) services in August 2008 impliedly did not toll the running of the initial period of reunification services. The initial, approximately 12-month period of reunification services expired in October 2008.

Under former section 361.5, as amended in 2008 and in effect in July 2009 when the court once again removed the children, both the 18-month and 24-month maximums for court-ordered services were measured from "the date the child was *originally removed* from physical custody of his or her parent or guardian . . . ."[13] (Former § 361.5, subds. (a)(2) and (a)(3), italics added [Stats. 2008, ch. 482, § 1.7, pp. 2791-2792].) Since applicable law explicitly precluded tolling of the minimum period of reunification services by the child's return to the parent's physical custody and set outside limits for extending those services measured from the specific date a child was originally removed, implicitly the running of those maximum time periods could not be legally interrupted by the child's return to a parent's physical custody with family reunification services.

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[13] As amended, effective January 1, 2008, rule 5.502(18) defines "initial removal" to mean "the date on which the child, who is the subject of a petition filed under section 300 or 600, was taken into custody by the social worker or a peace officer, or was deemed to have been taken into custody under section 309(b) or 628(c), if removal results in the filing of the petition before the court."

This conclusion is only buttressed by looking at dependency law as a whole. "Given the complexity of the statutory scheme governing dependency, a single provision 'cannot properly be understood except in the context of the entire dependency process of which it is part.' (*Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 253 . . .)" (*In re Nolan W.* (2009) 45 Cal.4th 1217, 1235.) Under the law applicable in July 2009, the time periods for the initial period of reunification services for children three years of age and older and for the extended periods of reunification services dovetailed with the permanency hearing (within 12 months of entering foster care), permanency review hearing (within 18 months of original removal), and subsequent permanency review hearing (within 24 months of original removal). (See former §§ 361.5, subd. (a), 366.21, subds. (f) and (g) [Stats. 2008, ch. 482, §§ 1.7, 2, pp. 2790-2792, 2804-2805]; §§ 366.22, subds. (a) and (b), 366.25. subd. (a) [Stats. 2008, ch. 482, §§ 3, 4, pp. 2807-2810].) An extension of services up to the 18-month maximum under former section 361.5, subdivision (a)(2) (now (a)(3)) required a showing at the permanency hearing. (Stats. 2008, ch. 482, § 1.7, p. 2791.) An extension of services up to the 24-month maximum under former section 361.5, subdivision (a)(3) (now (a)(4)) required a showing at the permanency review hearing. (Stats. 2008, ch. 482, § 1.7, p. 2791.)

We discern no ambiguity in former section 361.5 that requires judicial interpretation with regard to calculation of the maximum periods for provision of reunification services. (See *People v. Dieck* (2009) 46 Cal.4th 934, 940 ["A statutory provision is ambiguous if it is susceptible of two reasonable interpretations"].) "A court begins with the statute's words, because they are generally the most reliable indicator of the legislative intent, giving those words their ordinary meaning, and if no ambiguity appears then the process of construction is complete and the ordinary meaning controls. [Citations.]" (*People v. Statum* (2002) 28 Cal.4th 682, 700.) "[I]f a statute is unambiguous, it must be applied according to its terms. Judicial construction is neither

necessary nor permitted." (*Ventura County Deputy Sheriffs' Assn. v. Board of Retirement* (1997) 16 Cal.4th 483, 492-493.)

Nevertheless, appellant maintains that the time during which she received family reunification services does not count toward the 18-month maximum. She puts great stock in the 2008 substitution of the phrase "family reunification services" for the phrase "child welfare services" in one sentence of former section 361.5, subdivision (a). Before its amendment in 2008, subdivision (a) of section 361.5 read: "[With exceptions not here relevant], whenever a child is removed from a parent's or guardian's custody, the juvenile court shall order the social worker to provide child welfare services to the child and the child's mother and statutorily presumed father or guardians. . . . *Child welfare services*, when provided, shall be provided as follows . . . ." (Stats. 2007, ch. 583, § 25.5, p. 3891, italics added.) As amended in 2008, subdivision (a) of section 361.5 provided in pertinent part: "[With exceptions not here relevant], whenever a child is removed from a parent's or guardian's custody, the juvenile court shall order the social worker to provide child welfare services to the child and the child's mother and statutorily presumed father or guardians. . . . [¶] . . . *Family reunification services*, when provided, shall be provided as follows . . . ." (Stats. 2008, ch. 482, § 1.7, p. 2790, italics added.) Appellant insists that this change means that the time period during which she received family maintenance services does not count toward the period for receiving reunification services.

Even in the pre-2008 version of section 361.5, subdivision (a), the type of child welfare services provided to the parent from whom a child was removed were implicitly family reunification services as opposed to family maintenance services. (See § 16501 ["The child welfare services provided on behalf of each child represent a continuum of services, including emergency response services, family preservation services, family maintenance services, family reunification services, and permanent placement services"];

rule 5.502(8) [" 'Court-ordered services' . . . means child welfare services or services provided by an appropriate agency ordered at a disposition hearing at which the child is declared a dependent child of the court, and any hearing thereafter, for the purpose of maintaining or reunifying a child with a parent or guardian"].) Appellant fails to identify any legislative history directly supporting her interpretation. The legislative history of the 2008 bills amending section 361.5 (Assembly Bills Nos. 2341 and 2070)[14] does not mention anything about this specific change in wording.

The 2008 statutory changes in dependency law had two principal objectives. One was to increase "the time reunification services may be available to parents whose children are dependents of the court in consideration of the barriers faced by parents who are incarcerated, institutionalized, or in residential substance abuse treatment to assessing [reunification] services." (Assem. Bill Analysis of Assem. Bill No. 2070, as amended August 18, 2008, Concurrence in Sen. Amendments, p. 1.) The other purpose was to generally provide reunification services for a minimum time period. (See Legis. Counsel's Digest, Assem. Bill No. 2341 (2007-2008 Reg. Sess.) 2 Stats. 2008, p. 2687; Assem. Floor Analysis of Assem. Bill No. 2341, as amended Aug. 18, 2008, Concurrence in Sen. Amendments, p. 1; Sen. Rules Comm., Office of Sen. Floor Analyses, analysis of Assem. Bill No. 2341, as amended in Sen. on Aug. 18, 2008, pp. 1-5.) The 2008

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[14] Section 1.7 of Assembly Bill No. 2070 (2007-2008) (ch. 482) incorporated changes to section 361.5 proposed by that bill and Assembly Bill No. 2341 (2007-2008) (ch. 457) and caused section 1.7 of Assembly Bill No. 2070 (2007-2008) to become operative under certain conditions, including the condition that Assembly Bill No. 2070 be enacted after Assembly Bill No. 2341. (See Stats. 2008, ch. 482, § 10, subd. (b), p. 2839; see Gov. Code, §§ 9510 [the order of chapter numbering is presumed to be the order in which the bills were approved by the Governor]; 9605 [absent contrary express provision in statute enacted last, there is a conclusive presumption that statute enacted last intended to prevail over statutes enacted earlier at the same session and, absent any contrary express provision in statute with higher chapter number, there is a presumption that a statute with higher chapter number was intended by the Legislature to prevail over a statute enacted at the same session with lower chapter number].)

substitution of "family reunification services" for "child welfare services" in subdivision (a) of section 361.5 is most reasonably understood as a non-substantive, clarifying change.

The 18-month maximum for reunification services in this case, calculated from the date of the children's original removal from custody in September 2007, expired in March 2009. On July 21, 2009, when the court sustained the section 387 petitions and once again removed the children, there remained less than two months of the 24-month statutory maximum measured from the date of the children's original removal. The record does not demonstrate that the conditions for additional reunification services beyond 18 months were met. (See former § 361.5, subd. (a)(3) [Stats. 2008, ch. 482, § 1.7, p. 2791], § 366.22.)[15] Therefore, the court properly determined the time for reunification services had run under the chronological state of the case and moved into permanency planning. (See *Carolyn R. v. Superior Court* , *supra*, 41 Cal.App.4th at p. 166.)

Accordingly, appellant has not established that her counsel's representation was deficient because he failed to argue that the court had discretion to order additional reunification services and failed to request such services based upon statutory changes. (See § 317.5 ["All parties who are represented by counsel at dependency proceedings shall be entitled to competent counsel"]; *In re Melvin A.* (2000) 82 Cal.App.4th 1243, 1252 [parent claiming violation of statutory right to representation by competent counsel must show "counsel failed to act in a manner to be expected of reasonably competent attorneys practicing in the field of juvenile dependency law"]; see also rule 5.560(d)(1) [definition of "competent counsel"]; cf. *Strickland v. Washington* (1984) 466 U.S. 668,

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[15] See ante, footnote 6.

688 [104 S.Ct. 2052] ["The proper measure of attorney performance remains simply reasonableness under prevailing professional norms"].)

Further, the court's positive statements regarding parent-child attachment, its reference to section 388 petitions, and its expressed hope that the family could move in "a different direction" at the end of the section 387 hearing did not, as appellant claims, show that the court would have ordered additional reunification services if only it had been aware of the recent statutory changes. Rather, the judicial comments were consistent with the possibility that appellant might overcome her problems in the future. (See §§ 388 [petition for modification of order based upon changed circumstances]; cf. *Renee J. v. Superior Court, supra,* 26 Cal.4th 735, 750 [section 388 is "an available mechanism by which to modify the juvenile court's previous orders, given some sufficiently compelling new evidence or change of circumstances"]; *In re Michael D.* (1996) 51 Cal.App.4th 1074, 1086-1087 [affirming trial court's order granting mother's petition to modify the permanent plan for legal guardianship and regain physical custody of child]; see also § 366.3, subds. (e)(4) ["If the reviewing body determines that a second period of reunification services is in the child's best interests, and that there is a significant likelihood of the child's return to a safe home due to changed circumstances of the parent, pursuant to subdivision (f), the specific reunification services required to effect the child's return to a safe home shall be described"]; (f) ["In [specified] cases, the court may order that further reunification services to return the child to a safe home environment be provided to the parent or parents up to a period of six months, and family maintenance services, as needed for an additional six months in order to return the child to a safe home environment"].)

E. *Orders to Facilitate Visitation*

On July 21, 2009, the court ordered a permanent plan of foster home placement with the specific goal of legal guardianship and scheduled the case for a hearing under

section 366.3.[16] It did not schedule a selection and implementation hearing pursuant to section 366.26.

Under provisions for permanency planning, courts were, and still are, empowered to make any appropriate order to ensure that non-sibling relationships, important to the child and in the child's best interests, are maintained whenever the court orders that a child who is 10 years or older remain in long-term foster care. (See former § 366.21, subd. (g) [Stats. 2008, ch. 482, § 2, p. 2806]; §§ 366.21, subd. (g), 366.22, subd. (a), 366.25, subd. (a)(3).) On July 21, 2009, Da. K. was over 10 years of age. In addition, when a court does not return a child to a parent or legal guardian at the permanency review hearing and, instead of ordering a section 366.26 hearing, orders that the child remain in foster care as statutorily authorized, the court must "continue to permit the parent or legal guardian to visit the child unless it finds that visitation would be detrimental to the child." (§ 366.22, subd. (a).) Here, the court implicitly found that the visitation with each parent would be detrimental to the children without each parent's participation in the mandated programs or services. The court did not exceed its authority in ordering appellant to continue a 12-step program, individual counseling, and drug testing.

The July 21, 2009 orders are affirmed.

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[16] Section 366, subdivision (b), requires "periodic reviews of each child in foster care shall be conducted pursuant to Sections 366.3 and 16503." Under section 366.3, the status of a dependent child in long-term foster care placement must be reviewed at least every six months. (§ 366.3, subds. (d)-(h).) Section 16503, subdivision (a), mandates: "Subsequent to completion of the hearing conducted pursuant to Section 366.25 or 366.26, the agency responsible for placement and care of a minor . . . shall ensure that a child in foster care shall receive administrative reviews periodically but no less frequently than once every six months."

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ELIA, J.

WE CONCUR:

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PREMO, Acting P. J.

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McADAMS, J.